

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of

Telecommunications Carriers Eligible to  
Receive Universal Service Support

Petition of TelOps International, Inc.  
dba AmTel for Limited Designation as  
An Eligible Telecommunications Carrier  
Pursuant to Section 214(e)(6) of the  
Communications Act In the States of Alabama,  
Connecticut, Delaware, Florida, New Hampshire,  
New York, North Carolina, Tennessee, Texas,  
the Commonwealth of Virginia,  
And District of Columbia

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WC Docket No. 09-197

**TELOPS INTERNATIONAL, INC. D/B/A AMTEL (AMTEL)  
PETITION FOR LIMITED DESIGNATION AS AN ELIGIBLE  
TELECOMMUNICATIONS CARRIER IN ALABAMA, CONNECTICUT,  
DELAWARE, THE DISTRICT OF COLUMBIA, FLORIDA, NEW HAMPSHIRE,  
NEW YORK, NORTH CAROLINA, TENNESSEE, TEXAS AND VIRGINIA**

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January 18, 2013

## SUMMARY

TelOps International, Inc. dba AmTel ("AmTel") requests designation as an eligible telecommunications carrier ("ETC"), pursuant to Section 214(e)(6) of the Communications Act of 1934 ("Act"), as amended, and Section 54.202 of the Rules of the Federal Communication Commission ("Commission"), for the limited purpose of receiving Lifeline Universal Service Support in the States of Alabama, Connecticut, Delaware, Florida, New Hampshire, New York, North Carolina, Tennessee, Texas, the Commonwealth of Virginia, and District of Columbia (hereafter "requested States"). The requested States have all stated that they lack jurisdiction over wireless service providers and, consequently, Commission review and approval of AmTel's petition is appropriate.

As described in greater detail herein, AmTel satisfies all of the requirements for designation as an ETC and is committed to complying with all of the Commission's rules and requirements for ETCs providing Lifeline services. Grant of ETC status will be in the public interest as AmTel's provision of Lifeline-supported services will further the Commission's goals of the Lifeline program by increasing the service options available to low-income consumers. Designation of AmTel as an ETC will provide consumers with a valuable alternative for obtaining telephone service. Furthermore, the increased competition that AmTel's entry into the market will provide should spur other service providers to improve their service offerings to low-income consumers.

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Communications Act In the States of Alabama,	§	
Connecticut, Delaware, Florida, New Hampshire,	§	
New York, North Carolina, Tennessee, Texas	§	
And the Commonwealth of Virginia,	§	
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NEW YORK, NORTH CAROLINA, TENNESSEE, TEXAS AND VIRGINIA**

Comes now, TelOps International, Inc. d/b/a AmTel ("AmTel" or "the Company"), and pursuant to Section 214(e)(6) of the Communications Act of 1934 (Act), as amended,<sup>1</sup> and Section 54.202 of the Rules of the Federal Communication Commission ("Commission"),<sup>2</sup> respectfully petitions the Commission for limited designation as an eligible telecommunications carrier ("ETC") in the States of Alabama, Connecticut, Delaware, Florida, New Hampshire, New York, North Carolina, Tennessee, Texas, the Commonwealth of Virginia, and District of

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<sup>1</sup> 47 U.S.C. § 214(e)(6).

<sup>2</sup> 47 C.F.R. § 54.202.



Columbia (hereafter "requested States") for the sole purpose of receiving Lifeline Universal Service Support. AmTel does not request ETC status for the purpose of receiving support from any other Universal Service Fund ("USF") programs, nor does it seek support from the Link Up program.

AmTel is a common carrier as is required by 47 C.F.R. § 214(e)(1), as that term is defined by 47 U.S.C. § 153(10) and 47 C.F.R. § 20.9(a). The Company will be providing the required services, at least in part, as a reseller. CMRS resellers like AmTel Wireless are treated as common carriers for regulatory purposes.<sup>3</sup> Consequently, AmTel is regulated as a common carrier in connection with its provision of CMRS, and AmTel meets the ETC requirement of being a common carrier.

Section 214(e)(2) of the Act reserves to state public utility commissions the authority to designate ETC status to requesting entities.<sup>4</sup> However, Section 214(e)(6) permits the FCC to designate a petitioner as an ETC in cases involving a "common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission."<sup>5</sup> The FCC has stated that before it will consider an ETC application, the entity seeking ETC status must demonstrate that it "is not subject to the jurisdiction of a state commission"<sup>6</sup> and that the entity must provide an "affirmative statement" from the relevant state commission that the carrier is not subject to the state commission's jurisdiction.<sup>7</sup> As

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<sup>3</sup> See 47 U.S.C. § 332(c)(1)(A).

<sup>4</sup> 47 U.S.C. § 214(e)(2).

<sup>5</sup> 47 U.S.C. § 214(e)(6).

<sup>6</sup> See *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, 12 FCC Rcd 22947 (1997).

<sup>7</sup> See *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, 155 FCC Rcd 12208 ¶7 (2000).

demonstrated in the documents attached as Exhibit A, the Federal Jurisdiction States have affirmatively stated that they lack jurisdiction or will not assign ETC status to commercial mobile radio service ("CMRS") providers. Accordingly, the Commission has jurisdiction, pursuant to Section 214(e)(6) to review and grant the Company's request for designation as an ETC in the Federal Jurisdiction States. Therefore, pursuant to Section 214(e)(6) of the Act, the Commission shall review the Company's request for ETC designation in these jurisdictions.<sup>8</sup>

#### **I. ABOUT TELOPS INTERNATIONAL, INC. DBA AMTEL**

TelOps International, Inc. is a Texas corporation with headquarters in Corinth, Texas. Mark McWhirter is the Company's President. The Company has no subsidiaries and operates under the assumed name "AmTel." AmTel has no affiliates that participate in the Lifeline program or any other federal universal service program.

AmTel is successfully providing Lifeline-supported services in the various states where it has received ETC designation and has a steadily increasing customer base. AmTel uses Sprint as the underlying network provider/carrier for AmTel's provision of wireless services. The Company uses a combination of its own switching facilities and the resale of AT&T's services to provide its wireline services.

AmTel was designated as a facilities-based, wireline Eligible Telecommunications Carrier ("ETC") in the state of Arkansas on March 25, 2010, and in the state of Oklahoma on March 26, 2009. AmTel was also designated as a wireless ETC by the Arkansas Public Service Commission on May 24, 2011.

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<sup>8</sup> See *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, 15 FCC Rcd 12208 (2000).

The Company has been providing wireline Lifeline services in Arkansas since November 2009 and has been providing wireless services in Arkansas since June 2011. AmTel has been providing wireline Lifeline services in Oklahoma since July 2010. The Company currently has approximately 29,000 Lifeline customers in Oklahoma and Arkansas.

AmTel currently has an application for ETC designation pending before the Louisiana Public Service Commission to provide wireless Lifeline-only services. AmTel did not seek, and will not accept, High Cost support in any of the states for which it has been designated an ETC or for which it may have a pending ETC application.

AmTel is financially stable and fully capable of honoring its service obligations to customers, as well as federal and state regulatory obligations. AmTel has not been subject to any enforcement action or ETC revocation proceeding in any state.

The Company is seeking to avail itself of the Commission's conditional grant of forbearance from the Act's "owned-facilities" requirement.<sup>9</sup> Therefore, AmTel has filed a Compliance Plan with the Commission's Wireline Competition Bureau in accordance with the directive of the Commission's *Lifeline Reform Order*.<sup>10</sup> The Compliance Plan contains very detailed information about the Company and is incorporated herein by reference. (See Exhibit B.)

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<sup>9</sup> See *Lifeline and Link Up Reform and Modernization, Lifeline and Link Up, Federal-State Board on Universal Service, Advancing Broadband Availability through Digital Literacy Training*, 26 FCC Rcd 6656 WC Docket No. 11-42 *et al.*, Adopted January 31, 2012 and Released February 6, 2012 ("*Lifeline Reform Order*"); see also 47 U.S.C. § 214(e)(1)(A).

<sup>10</sup> *Id.*; also see *Wireline Competition Bureau Provides Guidance for the Submission of Compliance Plans Pursuant to the Lifeline Reform Order*, Public Notice, DA 12-314 (rel. Feb. 29, 2012).



## II. THE COMMISSION HAS JURISDICTION OVER AMTEL'S DESIGNATION REQUEST

Section 254(e) of the Act provides that “only an eligible telecommunications carrier designated under Section 214(e) shall be eligible to receive specific Federal universal service support.”<sup>11</sup> Section 214(e)(1) of the Act reserves the authority to designate entities as ETCs to state public utility commissions (“PUCs”). However, pursuant to Section 214(e)(6), the Commission may designate as an ETC “a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission.”<sup>12</sup> The Commission has established that a carrier must demonstrate that it “is ‘not subject to the jurisdiction of a state commission’”<sup>13</sup> before the Commission may consider an application for ETC designation.<sup>14</sup> The Commission also has stated that any carrier seeking ETC designation from it must provide the Commission with an “affirmative statement” from the state PUC that it lacks jurisdiction to perform the ETC designation.<sup>15</sup> The Federal Jurisdiction States have each made clear that they lack authority to perform ETC designations for wireless carriers such as AmTel. Supporting documentation from the Federal Jurisdiction States is attached as Exhibit A.

AmTel certifies that each state for which AmTel seeks ETC designation from the Commission has asserted that it lacks jurisdiction over the wireless services that AmTel seeks to provide as a Lifeline-only ETC. AmTel therefore seeks ETC designation from the Commission

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<sup>11</sup> 47 U.S.C. § 254(e).

<sup>12</sup> 47 U.S.C. § 214(e)(6).

<sup>13</sup> *See id.* § 214(e)(6).

<sup>14</sup> *See Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, CC Docket No. 96-45, Public Notice, 12 FC Rcd 22947, 22948 (1997).

<sup>15</sup> *See Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, 15 FCC Rcd 12208, 12264 ¶ 113 (2000).



pursuant to Section 214(e)(6).<sup>16</sup> Accordingly, for each of the Federal Jurisdiction States, AmTel requests that the Commission exercise its authority under Section 214(c)(6) and determine that AmTel is “a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission.”<sup>17</sup>

### **III. AMTEL SATISFIES THE COMMISSION’S REQUIREMENTS FOR DESIGNATION OF ETCS**

Section 214(e)(6) of the Act and Sections 54.201 and 54.202 of the Commission’s rules outline the requirements that must be met before a carrier can be designated as an ETC by the FCC. AmTel meets these requirements and should be granted ETC designation in the requested States.

#### **A. AmTel is a Common Carrier**

Providers of wireless services are treated as common carriers for regulatory purposes. Section 332(c)(1)(A) of the Act states that CMRS providers will be regulated as common carriers.<sup>18</sup> AmTel is a common carrier by law as a reseller of wireless telecommunications services pursuant to 47 C.F.R. § 20.9(a)(10) which provides that mobile satellite service involving the provision of commercial mobile radio service (by licensees or resellers) directly to end users shall be treated as common carriage services. AmTel will provide mobile telecommunications services and, accordingly, is a common carrier, as required by 54.201(b) of the Commission’s rules.<sup>19</sup>

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<sup>16</sup> 47 U.S.C. § 214(e)(6).

<sup>17</sup> *Id.*

<sup>18</sup> See 47 U.S.C. § 332(c)(1)(A).

<sup>19</sup> See 47 C.F.R. § 54.201(b).

## B. “Own facilities” Requirement

To be eligible for federal universal service support, the Act provides that an ETC must offer the services supported by federal universal service support mechanisms throughout a service area “either using its own facilities or a combination of its own facilities and resale of another carrier’s services.”<sup>20</sup> However, the Commission has decided to “forbear, on [its] own motion, from applying the Act’s facilities requirement of section 214(e)(1)(A) to all telecommunications carriers that seek limited ETC designation to participate in the Lifeline program, subject to certain conditions.”<sup>21</sup> The Company commits to satisfaction of these conditions. To this end, AmTel has submitted for review, on July 7, 2012, a Compliance Plan<sup>22</sup> (itself a condition to grant of forbearance), which meets the requirements of the *Lifeline Reform Order*<sup>23</sup> and details how the Company is satisfying these conditions.<sup>24</sup> A Revised Compliance Plan was filed November 30, 2012.<sup>25</sup> The Compliance Plan contains very detailed information about the Company and is incorporated herein by reference. (See Exhibit B.) Consequently, AmTel is not required to meet the “own facilities” requirement of Section 214(e)(1)(A).

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<sup>20</sup> See 47 U.S.C. § 214(e)(1)(A).

<sup>21</sup> See *Lifeline Reform Order*, ¶ 368.

<sup>22</sup> *In the Matter of Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible to Receive Universal Service Support, TelOps International, Inc. d/b/a AmTel (AmTel)*, WC Docket No. 11-42, WC Docket No. 09-197, Compliance Plan of TelOps International, Inc. d/b/a AmTel (AmTel) (July 7, 2012).

<sup>23</sup> See *Lifeline Reform Order*, ¶ 368.

<sup>24</sup> *Id.*

<sup>25</sup> *In the Matter of Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible to Receive Universal Service Support, TelOps International, Inc. d/b/a AmTel (AmTel)*, WC Docket No. 11-42, WC Docket No. 09-197, Compliance Plan of TelOps International, Inc. d/b/a AmTel (AmTel) (November 30, 2012).

### C. Certification

Section 54.202(a)(1) states that in order to be designated an ETC under section 214(e)(6), any common carrier in its application must certify that it will comply with the service requirements applicable to the support that it receives.<sup>26</sup> AmTel provides all of the telecommunications service supported by the Lifeline program<sup>27</sup> and will make the services available to all qualified consumers throughout the Federal Jurisdiction States. AmTel certifies that it will provide Voice Telephony services eligible for support by federal universal service support mechanisms.<sup>28</sup>

AmTel's services will include voice telephony services that provide voice grade access to the public switched network or its functional equivalent. Further, AmTel's service offerings will provide its customers with minutes of use for local service at no charge to the customer. AmTel's Lifeline offerings are outlined in its Compliance Plan, attached hereto as Exhibit B.

In addition to free voice services, AmTel's Lifeline plan offerings will include a free handset and free custom calling features, including voicemail, caller ID, and call waiting. All plans will include domestic long-distance at no additional per-minute charge. The Company will also provide access to emergency services provided by local government or safety officials, including 911 and E911 where available and will comply with any Commission requirements regarding E911-compatible handsets. AmTel will also comply with the Commission's forbearance grant conditions relating to the provision of 911 services and handsets.

In its *Lifeline Reform Order*, the FCC stated that toll limitation would no longer be deemed a supported service: "ETCs are not required to offer toll limitation service to low-income consumers if

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<sup>26</sup> See 47 C.F.R. § 54.202(a)(1)(i); see also 47 U.S.C. § 214(e)(1)(A).

<sup>27</sup> See 47 C.F.R. § 54.201(d)(1).

<sup>28</sup> See 47 C.F.R. § 54.101(a).



the Lifeline offering provides a set amount of minutes that do not distinguish between toll and non-toll calls."<sup>29</sup> Pursuant to this provision, AmTel will not provide toll limitation service. The Company, like most wireless carriers, does not differentiate domestic long-distance toll usage from local usage and all usage is paid for in advance. Pursuant to the *Lifeline Reform Order*, subscribers to such services are not considered to have voluntarily elected to receive TLS.<sup>30</sup>

#### **D. Advertising**

The Company commits to advertising the availability of its Lifeline services, and the charges for such, using media of general distribution,<sup>31</sup> and in a manner reasonably designed to reach those likely to qualify for the service.<sup>32</sup> Specifically, LTS' advertising materials will state, in clear, easily understood language: (1) that the service is supported by Lifeline; (2) that Lifeline is a government assistance program; (3) that the service is non-transferable; (4) that only eligible consumers may enroll in the program; (5) that the program is limited to one discount per household; (6) that documentation is necessary for enrollment; and (7) the Company's Lifeline Application will state that consumers who willfully make a false statement in order to obtain the Lifeline benefit can be punished by fine or imprisonment or can be barred from the program.<sup>33</sup> AmTel also will disclose its name on all marketing materials.<sup>34</sup> These statements will be included in all print, audio, video, and web materials (including social networking media) used to .

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<sup>29</sup> See *Lifeline Reform Order*, ¶230.

<sup>30</sup> See 47 C.F.R. § 54.202(a)(2).

<sup>31</sup> See 47 U.S.C. § 214(e)(1)(B).

<sup>32</sup> See 47 C.F.R. § 54.405(b)

<sup>33</sup> *Lifeline Reform Order*, ¶275; 47 C.F.R. § 54.405(c).

<sup>34</sup> 47 C.F.R. § 54.405(d).

describe or enroll customers in the Company's Lifeline service offering, as well as the Company's application forms and certification forms.<sup>35</sup> Examples of AmTel's advertising are in its Compliance Plan.<sup>36</sup> AmTel will ensure that all of its Lifeline advertising materials comply with the Commission's revised rule section 54.405(c). The Compliance Plan contains very detailed information about the Company's marketing practices and is incorporated herein by reference. (See Exhibit B.)

#### **E. Geographic Service Area**

The Company requests ETC designation for its entire service area in the States. The Company seeks designation as an ETC to provide Lifeline services in the rural and non-rural study areas provided in Exhibit C. AmTel understands that its service area includes the service areas of several rural carriers, however, the public interest factors discussed below, and the Commission's precedent in granting ETC designation in such areas justifies this designation as an ETC for purposes only of participation in the Lifeline program.

#### **F. Five-Year Plan**

The Company is a common carrier seeking designation as an ETC in order to provide supported services only under subpart E, Universal Service Support for Low-Income Consumers, of Part 54 of the Code of Federal Regulations and does not need to submit a five-year plan.<sup>37</sup>

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<sup>35</sup> *Id.*

<sup>36</sup> The Commission has stated that carriers have six months from the effective date of the Lifeline Reform Order to implement the disclosures required by Rule 54.405(c). See *Lifeline Reform Order*, ¶ 276.

<sup>37</sup> See 47 C.F.R. § 54.202(a)(1)(ii).

### **G. Ability to Remain Functional in Emergency Situations**

AmTel resells the services of its underlying carrier, Sprint. The Company is relying on Sprint's ability to remain functional in emergency situations, including the ability to: ensure functionality without an external power source by maintaining a reasonable amount of back-up power; reroute traffic around damaged facilities; and manage traffic spikes resulting from emergency situations, to comply with the requirement that the Company demonstrate its ability to remain functional in emergency situations.<sup>38</sup>

### **H. Consumer Protection and Service Quality Standards**

Under FCC guidelines, an ETC applicant must demonstrate that it will satisfy applicable consumer protection and service quality standards.<sup>39</sup> The Company commits to satisfying all such applicable state and federal requirements related to consumer protection and service quality standards. Specifically, AmTel commits to comply with the Cellular Telecommunications and Internet Association's (CTIA) Consumer Code for Wireless Service. As a reseller, AmTel's service is of the same quality and reliability as that of its underlying carrier(s).

### **I. Financial and Technical Capability**

AmTel is financially and technically capable of providing the Lifeline service in compliance with subpart E of Part 47 of the Code of Federal Regulations.<sup>40</sup> The Compliance

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<sup>38</sup> See 47 C.F.R. § 54.202(a)(2).

<sup>39</sup> See *Lifeline and Link Up Reform Order* at page 209, revised § 54.202.

<sup>40</sup> See 47 C.F.R. § 54.202(a)(4).



Plan for AmTel (attached as Exhibit B and incorporated herein by reference) contains a demonstration of the Company's financial and technical capabilities.

**J. Terms and Conditions of Voice Telephony Service Plans  
Offered to Lifeline Subscribers**

The Compliance Plan for AmTel (attached as Exhibit B and incorporated herein by reference) contains detailed information describing the terms and conditions of all voice telephony service plans offered to Lifeline subscribers, including details on the number of minutes provided as part of the plan; additional charges, if any, for toll calls; and rates for each such plan.<sup>41</sup>

**K. Additional Carrier Obligations to Offer Lifeline**

The Company commits to: comply with all of the Commission's rules regarding carrier obligations to offer Lifeline, including de-enrollment and requirements related to publicizing Lifeline-services;<sup>42</sup> certify, as part of each request for reimbursement, that it is in compliance with all of the rules in Subpart E;<sup>43</sup> implement policies and procedures for ensuring its Lifeline subscribers are eligible to receive Lifeline services;<sup>44</sup> make and submit required annual certifications;<sup>45</sup> comply with all applicable recordkeeping requirements;<sup>46</sup> and comply with all

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<sup>41</sup> See 47 C.F.R. § 54.202(a)(5).

<sup>42</sup> See 47 C.F.R. § 54.405.

<sup>43</sup> See 47 C.F.R. § 54.407.

<sup>44</sup> See 47 C.F.R. § 54.410.

<sup>45</sup> See 47 C.F.R. § 54.416.

annual reporting requirements.<sup>47</sup> Many of the details of how the Company plans to comply with these requirements are contained in the Company's Compliance Plan (attached as Exhibit B and incorporated herein by reference).

#### **IV. PUBLIC INTEREST**

Designation of AmTel as an ETC is in the public interest.<sup>48</sup> Designation of the Company as an ETC in the requested States will mean increased consumer choice of telecommunications services and products. In addition, AmTel has a unique way of doing business that provides diversity in the marketplace from which consumers can choose a carrier that satisfies their needs and desires. As a Lifeline services provider, the Company is determined to serve a traditionally underserved market that our Nation and this Commission recognize needs affordable, reliable telecommunications services and products.

Lifeline-services wireless carriers are particularly equipped to provide value to their customers because of the mobility afforded to wireless subscribers. And competition traditionally encourages service and product quality among competitors vying for subscribers.

#### **V. ANTI-DRUG ABUSE CERTIFICATION**

The Company certifies that neither it nor any party to the application is subject to a denial of federal benefits, including Commission benefits, pursuant to section 5301 of the Anti-Drug Abuse Act of 1988 (21 USC 862).

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<sup>46</sup> See 47 C.F.R. § 54.417.

<sup>47</sup> See 47 C.F.R. § 54.422.

<sup>48</sup> See 47 C.F.R. § 54.202(b).

## VI. CONCLUSION

Therefore, premises considered, AmTel respectfully requests Commission approval of its petition for designation as an ETC in the requested States.

Respectfully submitted,

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## DECLARATION

I, Mark McWhirter, President of TelOps International, Inc. dba AmTel do hereby affirm under penalty of perjury that I have reviewed all of the factual assertions set forth in the foregoing petition for ETC status and that all such statements made therein are true and correct to the best of my knowledge, information, and belief.

To the best of my knowledge, no party to this Petition, nor any of their officers, directors, or persons holding five percent or more of the outstanding stock of shares (voting or non-voting) as specified in Section 1.2002(b) of the Commission's rules are subject to denial of federal benefits, including Commission benefits, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862.

Executed on January 10, 2013

A handwritten signature in dark ink, appearing to read 'Mark McWhirter', written over a horizontal line.

Mark McWhirter, President

## **EXHIBITS**

- A. Documentation of States Asserting Lack of Jurisdiction**
- B. AmTel's Compliance Plan**
- C. Study Areas**

# **EXHIBIT A**

## **Documentation of States Asserting Lack of Jurisdiction**



## **EXHIBIT B**

### **Compliance Plan of TelOps International, Inc. dba AmTel**

## **EXHIBIT C**

### **Study Areas**